

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 MARAL AGARUNOVA,

16-CV-638 (MKB)

4 Plaintiff,

United States Courthouse  
Brooklyn, New York

5 - versus -

October 18, 2017  
6 10:30 a.m.

7 THE STELLA ORTON HOME CARE  
AGENCY, INC.,

8 Defendant.

9 -----x  
10 TRANSCRIPT OF CIVIL CAUSE FOR PREMOTION CONFERENCE  
11 BEFORE THE HONORABLE MARGO K. BRODIE  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript  
25 produced by computer-aided transcription.

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1 (In open court.)

2 THE COURT: Good morning. Please be seated.

3 THE COURTROOM DEPUTY: This is civil cause for  
4 premotion conference, Docket Number 16-CV-638, Agarunova  
5 versus the Stella Orton Home Care Agency, Inc.

6 Counsels, please state your name for the record.

7 MR. WITTELS: Steven Wittels, Wittels Law Firm for  
8 the plaintiff and the class.

9 Good morning, Your Honor.

10 THE COURT: Good morning, Mr. Wittels.

11 MR. MCINTURFF: James McInturff for plaintiffs and  
12 the class, Wittels Law Firm.

13 THE COURT: Okay. Good morning, Mr. McInturff.

14 MR. DAVIDOFF: Good morning, Your Honor.

15 Philip Davidoff for Stella Orton Home Care.

16 THE COURT: Good morning, Mr. Davidoff.

17 You may remain seated.

18 So, Mr. Davidoff, explain to me why you are seeking  
19 a motion in this case.

20 MR. DAVIDOFF: Sure.

21 Initially -- well, first with respect to the state  
22 law claims that have been alleged, Stella Orton is a  
23 not-for-profit in New York that --

24 THE COURT: I couldn't read the attachment.

25 MR. DAVIDOFF: I'm sorry.

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1                   THE COURT: I could not read the attachment to your  
2 letter.

3                   MR. DAVIDOFF: Well, let me explain what they are.

4                   It has an exemption from New York State overtime  
5 under the wage order.

6                   THE COURT: Right.

7                   MR. DAVIDOFF: There's no --

8                   THE COURT: I understand what you're alleging it is,  
9 I'm simply saying I couldn't read it.

10                  MR. DAVIDOFF: Yes, I understand.

11                  THE COURT: And I also note that on one page of it,  
12 it doesn't indicate whether or not the box was checked for  
13 charitable purpose --

14                  MR. DAVIDOFF: It's underlined, Your Honor.

15                  THE COURT: -- well, at what point was it underlined  
16 and where is the box? There's a box before each of them.  
17 There's no box for charitable.

18                  MR. DAVIDOFF: Well, Your Honor, that's, we would  
19 submit, not relevant.

20                  THE COURT: Why isn't it relevant?

21                  I mean, I know what the form is and the form has a  
22 box.

23                  You can't speak when I'm speaking.

24                  The form has a box before each to be checked or not.  
25 Because you're required to specify the type of organization it

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1 is. There's no box on this that's checked to say it's a  
2 charitable organization, it was organized for charitable  
3 purposes, although there's typed information provided  
4 underneath that line.

5 So, I mean, my problem with this is I don't know  
6 that it satisfies what you're required to show in order to  
7 claim charitable organization, not-for-profit organization,  
8 and, therefore, exempt from New York labor law requirements.

9 MR. DAVIDOFF: I'll speak to that, Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. DAVIDOFF: Well, it -- the Department of  
12 Labor -- this is all in the Department of Labor process and  
13 the Department of Labor has repeatedly, and I even attached  
14 the last letter that says that we're on file, it's in effect.  
15 So they obviously accepted the form at the time in 1982 when  
16 this organization was founded. It's a charitable  
17 organization.

18 The exemption is still covered to this day at the  
19 Department of Labor, and the statute's very clear that the  
20 only way that you lose this exemption is if we withdraw it  
21 ourselves as an organization, or go to the Commissioner of  
22 labor, which they didn't. So there really can be no dispute  
23 that we have this exemption. It's at the Department of Labor.  
24 They can certify it eight days a week.

25 THE COURT: Why don't you speak to the FSLA claim,

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1 counsel.

2 MR. DAVIDOFF: Yes, Your Honor.

3 With respect to the overtime claim, the -- well,  
4 initially the complaint alleged that, and we agree with this,  
5 that the change to the federal exemption for home care workers  
6 went into effect in October of 2015. I understand from  
7 plaintiff's counsel, we had a conference before Magistrate  
8 Judge Mann last week, I think it was, or two weeks ago, and  
9 the plaintiffs have said they were going to amend the  
10 complaint. We're waiting for that. I think that's going to  
11 be coming relatively shortly. So there'll be some changes to  
12 that and we'll address those.

13 But there was a dispute in the courts, a split.

14 THE COURT: Okay, so putting that aside, I'm  
15 familiar with the issue --

16 MR. DAVIDOFF: Okay.

17 THE COURT: -- as to whether or not the date relates  
18 back to when the --

19 MR. DAVIDOFF: Correct.

20 THE COURT: -- the amendment was supposed to take  
21 effect or the date the mandate was issued by the Court of  
22 Appeals.

23 Why aren't the allegations as set forth in the  
24 complaint sufficient to show that plaintiff fell outside of  
25 the exemption prior to her termination in April, regardless of

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1 the change in law?

2 MR. DAVIDOFF: Okay. Well, with respect --

3 THE COURT: As I understand the law, the plaintiff  
4 is only required to allege that she spent more than 20 percent  
5 of her time doing work that would put her outside of the  
6 exemption, and plaintiff has made several allegations as to  
7 work that she did having nothing to do with her tier or charge  
8 of the individual she was caring for. Why isn't that enough  
9 to get her outside of the exemption?

10 MR. DAVIDOFF: Your Honor, I think as it's pled with  
11 respect to her individual claim, she would -- we would be  
12 litigating that issue and that it would be outside. She could  
13 conceivably be outside the exemption. That's correct.

14 THE COURT: So then what would be the basis for you  
15 to make a motion on the FSLA claim at this stage?

16 MR. DAVIDOFF: Well, Your Honor, I think that your  
17 point is well taken and whether we made that motion would  
18 depend on the validity of making a motion to strike the  
19 collective in that instance; however, I think, you know, Your  
20 Honor's point, and I think it's a valid one may be that we  
21 will make some kind of conditional certification to argue that  
22 point.

23 THE COURT: Okay. So with regard to an amendment,  
24 is plaintiff seeking to amend just to change the allegation as  
25 to the effective date of the change to the FSLA statute?

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1                   MR. WITTELS: Your Honor, Mr. McInturff, my  
2 colleague, will address it. But if --

3                   THE COURT: Either one of you can. I assume you  
4 both filed notices of appearance.

5                   Pull the mic towards you when you speak, sir.

6                   MR. MCINTURFF: Yes, Your Honor, we sought leave to  
7 amend before Judge Mann for -- on that point, and then on some  
8 other minor issues. Counsel had raised some points about work  
9 that may actually -- even though it's got -- considered manual  
10 work, it may fall into the category of work associated with  
11 one's patients such that it wouldn't qualify for this  
12 20 percent exemption.

13                  So we agree with counsel on that, that some of the  
14 tasks that the plaintiff alleged she performed would -- would  
15 not be part of the 20 percent. So we're cleaning that up and  
16 it's due to be filed today.

17                  THE COURT: Okay. So what is your position on  
18 counsel's claim as to the New York labor law claims and the  
19 certification upon which counsel relies?

20                  MR. MCINTURFF: Yes, Your Honor. So we have a  
21 couple of points regarding the New York labor law claim.

22                  Initially we agree with Your Honor that the  
23 certification is not proper on its face. Perhaps more  
24 importantly, the statute requires that the company be operated  
25 solely for charitable purposes and that no benefit, no

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1 pecuniary benefit, accrued to any individual shareholder, and  
2 we have engaged a noted accounting firm that has taken a look  
3 at the publicly available tax records of this company, Stella  
4 Orton Home Care, as well as a sister company that operates out  
5 of the exact same location, which is in a strip mall in Staten  
6 Island.

7 THE COURT: Also a home care business?

8 MR. MCINTURFF: Also a home care business, Your  
9 Honor. There's also a for-profit, a third for-profit entity  
10 operating out of that exact same location in Staten Island,  
11 and the accountant has found significant red flags that we  
12 believe demonstrate that this company is a large for-profit  
13 entity. They have revenues in excess of \$40 million a year.

14 And some -- just a few, briefly, red flags the  
15 accountant has identified, is that these two charitable  
16 entities that are operating out of the same location have  
17 different accountants. They have different books. One set of  
18 books is at the location. Another set of books is in a ranch  
19 out in New Jersey.

20 THE COURT: So wait. You're saying each charitable  
21 organization has two different books, or that both charitable  
22 organizations, each individually, have a different set of  
23 accountants?

24 MR. MCINTURFF: No, each organization has different  
25 books in different locations. They're using -- they're

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1 operating out of the same office. The office is integrated.  
2 I served the defendant with the complaint. It's a  
3 single-office, but for some reason they're using two separate  
4 accountants to do their accounting and they're using two  
5 separate books.

6 And if you look at the revenues of the companies,  
7 this is -- if this were a charity, this would be one of  
8 America's 200 largest charities. It would be bigger than the  
9 American Enterprise Institute. It would be bigger than the  
10 American Jewish World Service. It would only be slightly  
11 smaller than the Michael J. Fox Foundation for Parkinsons, yet  
12 it's operating out of a strip mall in Staten Island and has no  
13 website.

14 The accountant found that there were very  
15 questionable charges by paying \$600,000 a year in rent to rent  
16 a location that is above a Chase Bank in Staten Island. They  
17 have questionable management fees that we've looked at on a  
18 tax return. So we believe that this is -- not only is it not  
19 certified a charity on the form, but they're running a very,  
20 very large enterprise here with millions in revenue and  
21 they're working their home care workers very, very hard and  
22 trying to take advantage of this exemption.

23 THE COURT: So you're arguing that all three  
24 entities at that location are, in fact, one entity?

25 MR. MCINTURFF: We believe so. At this stage we

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1 haven't gotten discovery into it, but that's going to be one  
2 of the -- one of our areas of inquiry.

3 In addition, we're going to look into these  
4 payments. This is a very, very large business. Like I said,  
5 it would be one of America's largest charities. And it's --

6 THE COURT: There's nothing wrong with being a large  
7 charity if it's doing charitable work. The issue is more  
8 whether or not the exemption applies. And since the exemption  
9 does require that it's not making a profit for its  
10 shareholders. So that is really this whole issue that the  
11 Court is concerned about.

12 So here's what it appears to me; that on the FSLA  
13 claim, there's no motion to be made because plaintiff's  
14 allegations are sufficient to withstand a motion to dismiss.  
15 She's alleged, I thought, specific actions that she took that  
16 makes her activities, at least on the face of it in accepting  
17 her complaint, to fall outside of the exemption so that the  
18 FSLA would apply to her employment.

19 With regard to the New York labor law claim, while  
20 counsel has a legal challenge to that claim, there are issues  
21 of fact outstanding as to whether or not they comply, not just  
22 with the fact that they're registered as a charitable  
23 organization, since there are some questions as to the  
24 certification, which I believe can be readily dealt with, but  
25 the larger issue of whether or not it's a profit-making entity

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1 providing profit to its shareholders and, therefore, would not  
2 be exempt under New York labor law, neither of which can be  
3 decided on a motion to dismiss.

4 Counsel, to the extent you disagree, I'll be happy  
5 to give you a motion schedule so that you can go ahead and  
6 file your motion.

7 MR. DAVIDOFF: Yes, Your Honor.

8 We would like to -- if I can just speak to one or  
9 two points.

10 THE COURT: With regard to which point?

11 MR. DAVIDOFF: The New York State issue.

12 THE COURT: The New York labor law issue, okay. Go  
13 ahead.

14 MR. DAVIDOFF: Thank you, Your Honor. I appreciate  
15 it.

16 I'm a bit at a loss. This organization is -- I  
17 mean, this speculation is rampant, but it's a not-for-profit  
18 that is regularly audited by the State, Your Honor.

19 THE COURT: Yes, but I mean it doesn't mean that  
20 there can't be issues of fact and it's not speculation if  
21 they've had an accountant investigate the books and are  
22 raising issues. I mean, those do create issues as to whether  
23 or not the shareholders of the entity receive income and --

24 MR. DAVIDOFF: There are no shareholders.

25 THE COURT: Okay. Well, again, counsel, this is not

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1 something I can summarily dismiss on a motion to dismiss. For  
2 you to shown up, first of all, on a motion to dismiss, I'm  
3 allowed to look at the complaint and accept its allegations as  
4 true.

5 So, one, it's unclear that I can take -- and I guess  
6 maybe I can take judicial notice of the certification, but the  
7 certification that you submitted on its face raises issues.

8 So on a motion to dismiss, assuming I can accept the  
9 certification for what it is, it still doesn't prove that the  
10 New York labor law doesn't apply to your client because of the  
11 issue of whether or not the company generates a profit that's  
12 paid to its shareholders or its owner. If it has no other  
13 shareholder, there's clearly someone who owns it. So there's  
14 that outstanding. So I wouldn't be able to decide that on a  
15 motion to dismiss, in any event.

16 And as for the FSLA, as I indicated, my reading of  
17 the complaint as is -- and I understand counsel plans on  
18 filing an amended complaint today, but I've read the complaint  
19 and the allegations are more than sufficient to withstand a  
20 motion to dismiss as to whether or not plaintiff engaged in  
21 work that would put her outside the exemption.

22 MR. DAVIDOFF: Your Honor, I think that one point  
23 needs to just be reiterated.

24 THE COURT: Okay.

25 MR. DAVIDOFF: The exemption -- and we think that

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1 certification of its currentness, and on top of that the  
2 statute is very clear that the only way that that exemption is  
3 lost is by an order of the Commissioner of labor.

4 THE COURT: But this isn't about the exemption,  
5 counselor. I'm saying, putting that issue aside, whether or  
6 not the certification on its face means what it says it is,  
7 and assuming that I will look at that on a motion to dismiss,  
8 the statute also requires, secondarily, that there is no  
9 income to anyone. Certification doesn't make that true.  
10 That's my point. The certification alone isn't enough to  
11 satisfy that part of the statutory requirement.

12 And I guess for plaintiff, to the extent you're  
13 amending your complaint, you should add whatever allegations  
14 you have with regard to whether or not, under New York labor  
15 law, they can satisfy -- can or cannot satisfy the exemption  
16 requirement. I'm just looking for it right now.

17 MR. WITTELS: It must exclusively be operated for  
18 charity purposes.

19 MR. MCINTURFF: And no profit and there's no benefit  
20 to shareholders.

21 THE COURT: Right. And so to the extent you have  
22 evidence that there is profit, you should probably allege that  
23 in the amended complaint.

24 MR. MCINTURFF: We will, Your Honor.

25 MR. DAVIDOFF: Your Honor, what I'm concerned

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1 about --

2 THE COURT: What?

3 MR. DAVIDOFF: -- is some type of fishing  
4 expedition. I'm sure that we can --

5 THE COURT: I understand that, and we would limit  
6 it. Of course Judge Mann would make sure she limits any  
7 discovery, because especially on this issue I think we should  
8 have a limited discovery on the issue of whether or not the  
9 exemption applies in this case, so that we can, at some point,  
10 decide under on the New York labor law claims.

11 Plaintiffs, of course, to the extent that you can  
12 satisfy that it is a not-for-profit certified by New York  
13 State and there's no profits going to anyone, then that should  
14 be the end of the New York labor law claim under the statutory  
15 requirement. But Judge Mann will supervise the discovery on  
16 that issue, which is a separate issue from the substance of  
17 the New York -- of the FSLA claim.

18 MR. DAVIDOFF: Got it, Your Honor. I appreciate  
19 that.

20 THE COURT: Okay. So the amended complaint is going  
21 to be filed today?

22 MR. MCINTURFF: Yes, Your Honor.

23 THE COURT: Counsel, I'm urging you to review  
24 whether or not there's a basis to make a motion, but to the  
25 extent you decide to move forward with a motion, how much time

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1 would you need to make the motion?

2 MR. DAVIDOFF: Twenty-one days.

3 THE COURT: Okay.

4 THE COURTROOM DEPUTY: That will be November 8th.

5 THE COURT: And this will be as to the New York  
6 labor law claim, correct?

7 MR. DAVIDOFF: Let me just make sure that I'm  
8 limiting it to just that.

9 I believe that's correct, Your Honor. Yes.

10 THE COURT: Okay. So 21 days, November 8th.

11 How much time would you need to respond, counsel?

12 MR. WITTELS: Can I confer?

13 THE COURT: Yes.

14 MR. DAVIDOFF: While they're conferring, Your Honor,  
15 I just want to double check with them, because Your Honor had  
16 raised a point of them adding additional information to -- for  
17 their New York claim and the issue of the not-for-profit  
18 status.

19 THE COURT: Right.

20 MR. DAVIDOFF: I just wanted to make sure that they  
21 are still going to be filing it, their amendment today.  
22 That's all.

23 THE COURT: Right. And counsel has indicated filing  
24 this today. There's no reason for them not to.

25 MR. DAVIDOFF: Just basically to see if they want

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1 additional time to do that.

2 THE COURT: I see.

3 MR. WITTELS: Okay.

4 Could we have until Friday, Judge, just because we  
5 had alleged, obviously, that they were not, you know,  
6 exclusively for charitable purposes, but we hadn't really put  
7 in --

8 THE COURT: Any facts to support that allegation?

9 MR. WITTELS: Right. And at this point, you know,  
10 we felt the allegation would survive any motion to dismiss.  
11 But certainly we can put in some facts subject, obviously, to  
12 the discovery we need, which is why we're think in one sense  
13 it's a fruitless motion, because one of our responses to any  
14 motion to dismiss, since it really is questions of fact, Your  
15 Honor, would be we need additional discovery or we need to  
16 start discovery on that issue.

17 THE COURT: Well, to get by the motion to dismiss,  
18 you do have to allege some facts in support of those  
19 allegations that it's a not-for-profit where the plaintiff  
20 is -- assuming that I can refer to and rely on the  
21 certification if it is -- if there's a certified copy of it,  
22 then it's a public record that I should be able to take  
23 judicial notice of on a motion to dismiss.

24 So to the extent you're challenging not just the  
25 actual certification but the fact that they are a

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1 not-for-profit entity, then you do want to put forward some  
2 factual allegation to support your allegations in order to  
3 withstand a motion to dismiss on that point.

4 MR. MCINTURFF: Your Honor, we're happy to put  
5 forward those allegations, but just to foreshadow one of our  
6 arguments is that the affirmative defense that they're a  
7 not-for-profit is an affirmative defense, and we -- one of our  
8 threshold arguments is going to be that we, in fact, don't  
9 need to allege that they're not a not-for-profit because  
10 that's their burden to prove and we're happy to put forth  
11 facts.

12 THE COURT: It is their burden, but if there are no  
13 allegations that suggest otherwise, and as I take judicial  
14 notice of their certification that they are a nonprofit entity  
15 so certified by New York State and they are at the time I'm  
16 deciding the motion, then they may prevail on that motion  
17 without any allegations to the contrary.

18 MR. MCINTURFF: Fair enough, Your Honor.

19 THE COURT: So while it is their burden, ultimately  
20 their certification without any allegations to the contrary  
21 suggest that they've met that burden, right?

22 MR. MCINTURFF: Understood.

23 THE COURT: Right. So you need until Friday to file  
24 the amended complaint, and I'll do that.

25 What date is Friday?

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1 THE COURTROOM DEPUTY: The 20th.

2 THE COURT: The 20th.

3 Does that change your time for --

4 MR. DAVIDOFF: Twenty-one days from then.

5 THE COURT: Okay.

6 THE COURTROOM DEPUTY: November 10, which is a  
7 holiday. So you can have until the 13th.

8 MR. DAVIDOFF: Okay.

9 THE COURT: Okay. November 13th.

10 And how much time do you need to respond to that  
11 motion, counsel?

12 MR. WITTELS: Can we have 30 days, Your Honor?

13 THE COURT: Okay. That will be December.

14 THE COURTROOM DEPUTY: 13th.

15 THE COURT: December 13th.

16 And reply, counsel? I'll give you a week.

17 MR. DAVIDOFF: How about ten days. What date is  
18 that going to be?

19 MR. MCINTURFF: Your Honor, we have another deadline  
20 that day. Is it possible if we took until the 15th of  
21 December, the Friday?

22 THE COURT: Okay. December 15th.

23 MR. DAVIDOFF: And that will get around  
24 Christmastime.

25 THE COURT: Get it in before, counsel. It will be

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1 Friday, the 22nd.

2           Would that be a problem?

3           MR. DAVIDOFF: I am --

4           THE COURT: It's just a reply.

5           MR. DAVIDOFF: Yes. I'm leaving town on the 21st, I  
6 think. And they want the 15th. And that's going to be pretty  
7 rough, Your Honor.

8           Why do they need 30 days if I am going --

9           THE COURT: Counsel, tell me what you need. Don't  
10 worry about what they need.

11          MR. DAVIDOFF: Okay. I was suggesting -- I can --  
12 then I would take to the -- after New Year's.

13          THE COURT: To file a reply? On a simple issue?

14          MR. DAVIDOFF: I don't know how simple it is until I  
15 see it, Your Honor.

16          THE COURT: Well, we've already discussed it at  
17 length. It's really not a lot. It's either the exemption  
18 applies or it doesn't.

19          I believe, based on their representation of counsel,  
20 after they've amended the complaint, you're going to have a  
21 hard time being able to make this motion. But I will give you  
22 until -- give me a date the first week in January.

23          THE COURTROOM DEPUTY: January 5.

24          THE COURT: January 5th to respond.

25          Does that work, counsel?

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1 MR. DAVIDOFF: That's fine, Your Honor.

2 THE COURT: Okay. So the parties will move forward  
3 with discovery as to the FSLA claims after the amended  
4 complaint is filed this Friday.

5 Counsel will decide whether to move forward with the  
6 motion under the New York labor law claim, and if so, will  
7 file the motion by November 13th.

8 Plaintiffs to respond by December 15th. And counsel  
9 to reply by January 5th.

10 Is there anything else we need to discuss today?

11 MR. DAVIDOFF: I just have one clarification I  
12 wanted to say because I was writing. I heard all the part  
13 about the New York law. You said the FSLA piece follows  
14 their --

15 THE COURT: Would move forward with discovery.

16 MR. DAVIDOFF: Okay.

17 THE COURT: I don't know where you are with  
18 Judge Mann on that.

19 MR. WITTELS: Your Honor, just to be clear on that  
20 point then. We understand that we will be moving forward on  
21 the FSLA. Are we are also moving forward --

22 THE COURT: Pull the mic towards you, counsel.

23 MR. WITTELS: We would also be moving forward on the  
24 New York labor law claim.

25 THE COURT: Not until counsel decides whether to

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1 make the motion or not.

2 If he makes the motion, then we have to -- I have to  
3 decide the motion before you can move forward on that part of  
4 the claim.

5 MR. WITTELS: May I just confer one second.

6 THE COURT: Okay.

7 Counsel?

8 MR. WITTELS: Judge, I think as you pointed out  
9 earlier in the discussion, our allegations we believe will be  
10 sufficient to show that they're not a not-for-profit. But to  
11 the extent they raise anything outside the complaint that  
12 requires us to get into discovery, obviously --

13 THE COURT: Well, so the motion -- it will be a  
14 motion to dismiss, and it will be a motion to dismiss the New  
15 York labor law claims. And if I understand correctly, based  
16 on their status as a nonexempt -- as an exempt entity because  
17 of their charitable -- the fact that they're a charitable  
18 company, that's what counsel is planning to move on. Assuming  
19 that the amended complaint has factual allegations in there,  
20 so not just a statement saying they're not a charitable  
21 entity, but factual allegations from which I can draw the  
22 inference that they're not, then there is no basis for a  
23 motion.

24 MR. WITTELS: Okay. Understood. Thank you for that  
25 clarification.

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1                   THE COURT: So there would be no need for discovery  
2 in order for me to decide a motion if counsel decides to bring  
3 a motion. I should be able to decide that motion simply based  
4 on the submissions. And this is why I think such an extended  
5 period of briefing isn't even necessary, because it's such a  
6 discrete issue.

7                   And counsel, I reserve the right to summarily grant  
8 or deny your motion once you file it. So I'm asking you to  
9 file it, not to bundle it, and actually file the motion when  
10 you make it, and I'll make a decision at that point in time.

11                  So there really should be no cause for concern.  
12 You'll be able to move forward if I decide not to rule based  
13 on counsel's submission and to wait and hear, or get the  
14 information from you in your response and then counsel's  
15 reply. Either way, I'll decide it.

16                  If in deciding it I believe there are issues that  
17 need to go to discovery before I decide it, I will say that.  
18 But I don't believe there will be any basis for that because  
19 it would just be a legal argument based on their status.

20                  And based on the allegations in the complaint, I'll  
21 accept them as true and decide whether or not the exemption  
22 applies. Okay?

23                  MR. WITTELS: Thank you, Your Honor.

24                  THE COURT: Anything else today?

25                  MR. DAVIDOFF: No, Your Honor.

PROCEEDINGS

23

1 THE COURT: Counsel, okay. Have a good day,  
2 everyone.

3 MR. DAVIDOFF: Thank you. Thank you, Your Honor.

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5 (Whereupon, the matter was concluded.)

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10 I certify that the foregoing is a correct transcript from the  
11 record of proceedings in the above-entitled matter.

12 /s/ Linda D. Daneleczyk

December 28, 2017

13 LINDA D. DANELECZYK

DATE

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